

AGRICULTURE

DIVISION OF AGRICULTURAL AND NATURAL RESOURCES

Criteria and Standards For Animal Waste Management

Proposed New Rule N.J.A.C. 2: 91

**Authorized By: State Board of Agriculture and Charles M. Kuperus,
Secretary, Department of Agriculture.**

Authority: N.J.S.A. 4:9-38 and N.J.S.A. 4:27-19

**Calendar Reference: See Summary below for explanation of exception to
calendar requirement.**

Proposal Number: PRN 2005-

Submit comments by , 2006 to:

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New Jersey Department of Agriculture

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The agency proposal follows:

Summary

The Department of Agriculture (Department) is proposing new rules at N.J.A.C. 2:91 to assist farmers in the development and implementation of an animal waste management program. These proposed new rules are being promulgated in response to the requirements of N.J.S.A. 4:9-38 (Animal Waste; criteria and standards for composting and handling) and N.J.S.A. 4:27 (the Aquaculture Development Act) which direct the New Jersey Department of Agriculture to adopt, pursuant to the Administrative Procedures Act, P.L. 1968, c.410 (C.52:14B-1 et seq.), a comprehensive animal waste management program that provides for the proper disposal of animal waste. Required program standards under those statutes include, but need not be limited to, the establishment of criteria and standards for the composting, handling, storage, processing, utilization and disposal of animal wastes, compliance provisions, with penalties for non-compliance and violations, and the assessment of fees to cover reasonable administrative costs.

Proposed N.J.A.C. 2:91 was developed utilizing Department, USDA and Rutgers Cooperative Research and Extension staff and resources. The purpose of the proposed new rules is to mandate and establish criteria for the development and implementation of self-certified Animal Waste Management Plans (AWMPs) or Comprehensive Nutrient Management Plans (CNMPs) for farms that generate, handle or receive animal waste.

The Clean Water Act of 1972 established the basic structure for regulating discharges of pollutants into waters within and around the United States (US). It also gave the United States Environmental Protection Agency (USEPA) the authority to implement pollution control programs and set water quality standards. Progress has been made in cleaning up US rivers, lakes and coastal waters as a result of these programs and standards. However, 40% of US waterbodies still do not meet water quality goals for fishing, swimming or both. In 1997, a new initiative began to address the nations remaining water quality challenges. The resulting Federal Clean Water Action Plan of 1999 requires states to develop Total Maximum Daily Loads (TMDLs) for the impaired and threatened waterbodies that are not expected to meet water quality standards. The 303(d) list identifies these waterbodies for every state in a priority ranking system based upon the severity of pollution and the uses to be made of the water. TMDLs identify the amount of pollution the water is capable of assimilating while maintaining its intended use. In developing these TMDLs, the 303(d) list requires the identification and prioritization of waters not meeting in-stream water quality standards. Currently, New Jerseys 303(d) list identifies approximately 200 stream segments that are impaired due to fecal coliform, phosphorous, nitrogen and other contaminants. These impairments result from various non-point sources including wildlife, septic systems, pet wastes, fertilizers, and livestock operations.

In response to the Action Plan, NJDEP entered into an agreement with the USEPA to develop TMDLs for impaired waters that have been identified. NJDEP has developed

TMDLs for many of these listed waters and identified sources of the pollutants including agriculture. Once TMDLs are established, Waste Load Allocations (WLAs) identify the acceptable non-point pollutant load for various land use groups such as residential, industrial and agricultural. This rule was developed to proactively address potential non-point source pollution from animal agricultural operations.

In June 2000, the Department and NJDEP entered into a Memorandum of Agreement that established roles and responsibilities in meeting the mandate for animal feeding operations. It was agreed that, the NJDEP is responsible for the issuance of New Jersey Pollutant Discharge Elimination System (NJPDES) permits for pollutant discharges emanating from animal feeding operations that qualify as Concentrated Animal Feeding Operations (CAFOs). The Department is responsible for implementing a program for Animal Feeding Operations (AFOs) that do not require a CAFO permit.

The Department has been administering voluntary incentive based programs since 1937, to control non-point source pollution from all agricultural operations including livestock farms. Cost share programs such as: the State farmland preservation cost-share program and other Federal cost-share programs such as Environmental Quality Incentives Program (EQIP), Conservation Reserve Enhancement Program (CREP), Conservation Reserve Program (CRP), Grasslands Reserve Program (GRP), Wetlands Reserve Program (WRP), and Wildlife Habitat Incentives Program (WHIP) are available for those landowners

who meet specific eligibility criteria.

The proposed new rules establish requirements based upon the number of animal units (AUs) and animal density (AD) per acre on farms with livestock. All farms with livestock are required to follow the General Requirements section of the rules at N.J.A.C. 2:90-3.1. Farms with 8 to 299 AUs with AD less than or equal to 1 AU per acre are required to develop and implement a self-certified AWMP. Farms with 8 to 299 AUs with AD greater than 1 AU per acre are required to develop and implement a self-certified AWMP that meets the USDA NRCS-FOTG standards. The self-certified AWMP must receive approval from the local soil conservation district prior to implementation. Farms with 300 or more AUs are required to develop and implement a Comprehensive Nutrient Management Plan (CNMP) and be certified by the Department.

Farms that receive or apply 155 tons or more of animal waste annually are required to follow the General Requirements of these rules at N.J.A.C. 2:90-3.1, develop and implement a self-certified AWMP and follow the hauling requirements outlined in the rule. The Department identified the threshold of 155 tons because it is the manure production equivalent of 8 AUs – the minimum threshold of AUs regulated by these rules.

Operations that handle animal waste, including but not limited to dog kennels, petting zoos and game farms, are outside the scope of these proposed new rules.

Since Aquatic Farms must follow the waste management provisions set forth at N.J.A.C. 2:89 and the aquaculture management practices set forth in 2:76-2(a) 11, due to the variety of aquatic production systems, stocking rates, feed types, intensities and variable site characteristics these rules shall not apply to those operations.

The Right-To-Farm Act, N.J.S.A. 4:1C et seq. provides eligible, responsible farmers who operate in accordance with Agricultural Management Practices (AMP) adopted by the State Agricultural Development Committee (SADC), with protection from restrictive municipal ordinances, as well as public and private nuisance actions. Upon final adoption, it is anticipated that the criteria and standards outlined in the rules will be presented to the SADC as an AMP for animal waste management. If and when the SADC adopts these criteria and standards as the animal waste management AMP, commercial farms in compliance with these rules would be afforded the protections and benefits of the Right-To-Farm Act for the associated practices for animal waste management.

Self- Certified AWMPs and CNMPs shall be developed in conformance

with USDA Natural Resources Conservation Service's Field Office Technical Guide for New Jersey (NJ-FOTG), the NJ BMP Manual, developed in consultation with Rutgers Cooperative Research and Extension, entitled "On Farm Strategies to Protect Water Quality". These publications, as amended and supplemented, are adopted and incorporated by reference in the proposed new rules. Farms regulated by these rules, with the exception of aquatic farms, are required to develop and implement a self-certified AWMP or CNMP within 3 years of the effective date of these rules. All plans developed in accordance with these rules shall be protected by the Federal Freedom of Information Act and State Open Public Records Act.

Penalty provisions are established for any operation in violation of the requirements of this rule. The Department shall investigate alleged violations and take appropriate action. When non-compliance is determined, the Department may allow the operator up to 60 days to address or correct the non-compliance, or face a civil administrative penalty. The Department shall consider the seriousness of the violation, the conduct of the operator, compliance history and the type of plan required when determining the penalty amount.

Subchapter 1 sets forth the purpose and scope of the rules.

Subchapter 2 sets forth the definitions of terms used throughout the rule: “AMP”, “animal density”, “animal unit”, “animal waste”, “aquaculture”, “aquatic farm”, “aquatic organism”, “best management practices”, “certification”, “Closed system aquatic farm”, “composting”, “Comprehensive Nutrient Management Plan”, “Confined Animal Area”, “Department”, “District”, “Farm”, “NJ Field Office Technical Guide”, “Fomite”, “Land application”, “Livestock”, “Natural Resources Conservation Service”, “New Jersey Agricultural Experiment Station”, “NJDA BMP manual” “Nutrient Management Plan”, “Rutgers Cooperative Research and Extension”, “Self-certified Animal Waste Management Plan”, “Soil Conservation District”, “State Agricultural Development Committee”, “State Soil Conservation Committee”, “Technical Service Provider”, “Vector” and “Waters of the State”.

Subchapter 3 sets forth the requirements for animal waste management based upon animal units, animal density, type of farm, and tonnage of animal waste received or applied on farms and establishes exemptions to the rule. Section 3.1 sets forth the general requirements for all farms. Section 3.2 sets forth the requirements for Aquatic Farms. Section 3.3 sets forth the requirements for Farms with 1 to 7 AUs. Section 3.4 sets forth the requirements for Farms receiving or applying less than 155 tons of animal waste annually. Section 3.5 sets forth the requirements for Farms with 8 to 299 AUs with animal density of less than or equal to 1 AU per acre. Section 3.6 sets forth the requirements for Farms having 8 to 299 AUs with animal density

greater than 1 AU per acre. Section 3.7 sets forth the requirements for Farms with 300 AUs or more. Section 3.8 sets forth the requirements for Farms receiving or applying 155 tons or more of animal waste annually. Section 3.9 identifies exemptions.

Subchapter 4 sets forth penalty provisions. The Department shall investigate alleged violations and take appropriate action as set forth in section 4.1. The amount of the civil Administrative Penalty assessed is determined through the use of a point system. Points are assigned based upon the type of conduct (major, moderate, minor) and the type of plan developed (self-certified animal waste management or comprehensive nutrient management plan). Other factors, such as the violator's previous compliance history and whether a plan has been developed and/or implemented are also considered. Persons aggrieved by a determination under this subchapter are afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a) 5.

Social Impact

These proposed new rules will have a positive social impact as they will help ensure the protection of the water resources of the State, while recognizing that the livestock industry is a unique, vital and necessary economic component of the agricultural industry.

Economic Impact

The proposed new rules will have an economic impact on those persons who will be required to develop a self-certified animal waste management plans or a comprehensive nutrient management plans. However it is anticipated that there will be little or no costs associated with plan development. Technical and cost-share assistance for plan implementation will be available to eligible operations through a variety of Federal and State programs. Aquatic farms are currently required to follow appropriate waste management practices as a provision of the Aquaculture Management Practices at N.J.A.C. 2:76-2A.11. As a result it is anticipated that there will be little or no additional cost to aquatic farmers. In addition to developing a self-certified animal waste management plan, operations receiving or applying 155 tons or more of animal waste annually are required to follow the general requirements, and the hauling requirements outlined in the rule. It is anticipated that there will be no costs associated with the hauling requirements.

Recognizing the numerous livestock operations that may be impacted by these

rules, the Department has developed an animal waste management program that relies on a self-certified planning process that will allow the owner/operator to develop a plan with minimal assistance. The Department has updated the NJDA BMP Manual that outlines best management practices to protect water quality on the farm including strategies for barnyard manure and waste management. It contains a model plan and a template for the self-certified animal waste management plan. This manual will be available in hard copy and CD format at no cost.

There may be costs associated with the implementation of the required plans. Costs for conservation practices are based on cost tables developed by the NRCS. Some practices may be costly, depending on various factors such as local costs for construction, size of the structure, topography, soil type, property location, property size, the complexity of the plan, the conservation practices implemented, amount of manure generated, availability of materials and other local conditions. It is anticipated that the more extensive plans may qualify for cost-share assistance that is available through state and federal conservation programs.

Federal Standards Statement

Executive order No. 27 (1994) and P.L. 1995, c.65 require state agencies that adopt, re-adopt or amend state regulations that exceed any federal standards or requirements to include in the rulemaking document a comparison with federal law. There are no federal laws or regulations governing waste management activities on farms

encompassed in the proposed new rules except Aquatic Farms, which are subject to Concentrated Aquatic Animal Product Effluent Guidelines at 40 CFR Part 451. The USDA does provide for voluntary, incentive-based development and implementation of animal waste management plans using the federal technical standards as contained in the NRCS Field Office Technical Guide. Although the Federal FOTG standards are not currently mandatory under Federal law, the proposed new rules nevertheless incorporate standards that are recognized and encouraged by the NRCS. These rules are, therefore, no more stringent than the Federal standards and no Federal standards analysis is necessary.

Jobs Impact

These proposed new rules will not result in the generation or loss of any jobs.

Agriculture Industry Impact

The Department recognizes the livestock sector of the industry as vital to the economy of the agricultural industry and the state. Although the number of large livestock farms in New Jersey has declined over the last several decades, there has been an increase in the number of small livestock farms statewide. A significant number of livestock operations will be impacted by these rules, the majority of which are equine operations. To date, USDA-NRCS has provided technical assistance to landowners on a voluntary basis when requested. However, field staff technical assistance for manure management is limited, as they are responsible for the

implementation of all Federal Farm Bill programs. To avoid a backlog of technical assistance requests, the NJDA has established an animal waste management program that relies on animal unit thresholds and densities that will require the majority of livestock operations to develop and implement self-certified plans. Livestock operations with more than 300 animal units will most likely have already developed and implemented a Comprehensive Nutrient Management Plan, although some may have to be updated. The goal of this approach is to ensure that livestock operations in the state are doing their part to protect water quality as mandated in the Clean Water Act and the Clean Water Action Plan and to minimize the regulatory burden on our fragile livestock industry.

Regulatory Flexibility Analysis

The proposed new rules will have an impact on farmers who are primarily small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Except for Aquatic Farms, the rules require the development and implementation of a self-certified animal waste management plan or a comprehensive nutrient management plan when a farm operation has 8 animal units or more. The plans will be developed by the owner/operator or in consultation with NRCS or an appropriate agent. Plans will be implemented by the owner/operator. The development of comprehensive nutrient management plans will most likely to require technical assistance. However, it is anticipated that the necessary assistance

will be available at no or minimal cost from both State and Federal sources. It is anticipated that in most cases, plan implementation will be completed without assistance. However, either the NRCS or NJDA will likely oversee implementation. Capital expenditures may be necessary depending upon the site-specific plan that is developed. It is anticipated that the more complex comprehensive nutrient management plans may be eligible for cost-share assistance from State and Federal conservation programs. Since all required plans are site-specific, lesser or differing standards are applied based upon business size, operation and local conditions.

Smart Growth Impact

The proposed new rules will have no impact on smart growth or upon the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 1. PURPOSE AND SCOPE

2:91-1.1 Purpose and Scope

- a. These rules set forth the requirements for the development and implementation of self-certified Animal Waste Management Plans (AWMPs) or Comprehensive Nutrient Management Plans (CNMPs) for

farms, which generate, handle or receive animal waste. Aquatic Farms are subject to the provisions of the Aquatic Farmer License at N.J.A.C. 2:89 and the Aquaculture Management Practices at N.J.A.C. 2:76-2A.11. The rules require the timely and appropriate use of best management practices to protect water quality by:

- i. Controlling animal access to the surface waters of the state,
 - ii. Storing manure at least 100 linear feet from waters of the state, measured perpendicular to the watercourse from the top of bank outwards,
 - iii. Applying manure using proper nutrient management practices,
 - iv. Minimizing odors from manure storage and application areas,
 - v. Controlling vectors and fomites,
 - vi. Optimizing the beneficial use of nutrients from animal manure and bedding materials.
- b. These rules apply to operations with animals identified in the definition of “livestock”. These rules do not apply to facilities regulated by the NJDEP under N.J.A.C. 7:26 (Solid Waste Management rules), N.J.A.C. 7:26A (Solid Waste Recycling rules) and 7:14A (CAFO General Permit #NJ0138631).
- c. Requirements to the rules are as follows:

- i. All animal operations or operations receiving or applying animal waste shall comply with the general requirements of this rule set forth at N.J.A.C. 2:91-3.1.
- ii. Aquatic Farms shall follow the requirements set forth at N.J.A.C. 2:91-3.2.
- iii. Operations with 7 AUs or less, regardless of animal density, are encouraged, but not required, to develop a self-certified Animal Waste Management Plan (AWMP).
- iv. Operations receiving or applying less than 155 tons of animal waste per year are encouraged, but not required, to develop and implement a self-certified AWMP
- v. Operations with 8 to 299 AUs with animal density less than or equal to 1 AU per acre are required to develop and implement a self-certified AWMP.
- vi. Operations with 8 to 299 AUs with animal density greater than 1 AU per acre are required to develop and implement a self-certified AWMP that meets the USDA NRCS-FOTG standards and must be approved by the local soil conservation district.
- vii. Operations with 300 or more AUs, regardless of animal density are required to develop a Comprehensive Nutrient Management Plan (CNMP) in collaboration with Natural Resources Conservation

Service (NRCS), a Technical Service Provider (TSP) or appropriate agent. The operation must receive NJDA certification and the CNMP must be implemented by the applicant.

viii. Operations receiving 155 tons or more of animal waste per year are required to develop and implement a self-certified AWMP and maintain records regarding the names and addresses of sources, dates of transfer and quantities of manure.

d. Nothing in these rules shall be construed to alter or compromise the goals, purposes, and provisions of, or lessen the protections afforded to farmers by, the “Right to Farm Act”, P.L. 1983, c.31 (C.4:1C-1 et seq.), and any rules or regulations adopted pursuant thereto.

SUBCHAPTER 2. DEFINITIONS

2: 91-2.1 Definitions

For the purpose of this chapter, the following words and terms shall have the meanings described below, unless the context clearly indicates otherwise.

“Agricultural management practices (AMP)” means practices which have been recommended by the State Agriculture Development Committee, and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

“Animal Density (AD)” means the number of 1,000-pound animal equivalents per acre of available farmland for pasturing animals and other land available for application of animal waste, excluding farm structures, woodland and waterbodies.

“Animal Unit (AU)” means 1,000 pounds of live body weight and under standard conditions calculated on an annual average basis; the following conversion factors may be used as general guides for estimating animal units:

Animal Unit Equivalents and Manure Production

All Values Calculated from Midwest Plan Service - MWPS-18, 2000

Note: Animals not identified in the list shall be calculated based on species, production goals, breed or accepted species weights.

	Weight	Units/	Animal Units to Equal				Pounds/	Pounds/Year/	Manure Tons/Year		
Animal	Pounds	1000 Pounds	8 AU	10 AU	12 AU	Manure	Year	Unit	8 AU	10 AU	12 AU
<u>Dairy</u>											
Dairy	150	6.7	53.3	66.7	80.0						
	250	4.0	32.0	40.0	48.0						
Heifer	750	1.3	10.7	13.3	16.0	Solid	13000	17333.3	69.3	86.7	104.0
Lactating	1000	1.0	8.0	10.0	12.0	Solid	19992	19992.0	80.0	100.0	120.0
	1400	0.7	5.7	7.1	8.6	Solid	28000	20000.0	80.0	100.0	120.0
	1000	1.0	8.0	10.0	12.0	Liquid	38856	38856.0	155.4	194.3	233.1
	1400	0.7	5.7	7.1	8.6	Liquid	54000	38571.4	154.3	192.9	231.4
Dry Cow	1000	1.0	8.0	10.0	12.0						
	1400	0.7	5.7	7.1	8.6						
Veal	250	4.0	32.0	40.0	48.0	Solid	2200	8800.0	35.2	44.0	52.8
Veal	250	4.0	32.0	40.0	48.0	Liquid	3500	14000.0	56.0	70.0	84.0
<u>Beef</u>											
Calf	500	2.0	16.0	20.0	24	Solid	7000	14000.0	56.0	70.0	84.0
Finishing	750	1.3	10.7	13.3	16	Solid	11800	15733.3	62.9	78.7	94.4
Cow	1000	1.0	8.0	10.0	12	Solid	13400	13400.0	53.6	67.0	80.4
<u>Swine</u>											
Nursery	25	40.0	320.0	400.0	480.0	Solid	480	19200.0	76.8	96.0	115.2
Grow/Finish	150	6.7	53.3	66.7	80.0	Solid	2100	14000.0	56.0	70.0	84.0
Gestation	275	3.6	29.1	36.4	43.6	Solid	2000	7272.7	29.1	36.4	43.6
Lactating	375	2.7	21.3	26.7	32.0	Solid	4540	12106.7	48.4	60.5	72.6
Boar	350	2.9	22.9	28.6	34.3						
<u>Sheep</u>											
	100	10.0	80.0	100.0	120	Solid	1460	14600.0	58.4	73.0	87.6
	200	5.0	40.0	50.0	60	Solid					
<u>Poultry</u>											
Layer	4	250.0	2000.0	2500.0	3000	Solid	39	9750.0	39.0	48.8	58.5
Broiler	2	500.0	4000.0	5000.0	6000	Solid	18	9000.0	36.0	45.0	54.0
Turkey	20	50.0	400.0	500.0	600	Solid	46	2300.0	9.2	11.5	13.8
Duck	6	166.7	1333.3	1666.7	2000	Solid	60	10000.0	40.0	50.0	60.0
<u>Horse</u>											
	1000	1.0	8.0	10.0	12.0	Solid	18250	18250.0	73.0	91.3	109.5

“Animal Waste” means animal manure, unconsumed feed and associated bedding materials and normal mortalities of livestock, poultry or fish, in a farming operation. For the purpose of these rules, animal waste shall be free of plastic, metal, glass or other non-biodegradable materials with the exception of de minimis quantities which result from agricultural activities. This definition specifically excludes Waste Class 5: Regulated Medical Waste, as found in N.J.A.C. 7:26-3A.6, which includes contaminated animal carcasses and associated animal bedding materials that were known to have been exposed to infectious agents during research, including research at veterinary hospitals, production of biologicals, or testing of pharmaceuticals.

“Aquaculture” means a form of agriculture involving the propagation, rearing and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but is not limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators. Aquaculture is a water dependent activity but shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any state or federal law or regulation.

“Aquatic Farm” means any leased or privately owned water system and associated facilities and appurtenant structures capable of holding and/or producing cultured

aquatic stock. It may also refer to more than one facility and may include both hatchery and grow-out components, multi-species farms, processing, packaging and marketing.

“Aquatic Organism” means an animal or plant of any species or hybrid thereof and includes gametes, seeds, eggs, sperm, larvae, juvenile, and adult stages any of which is required to be in water during that stage of its life. This definition does not include birds and mammals.

“Best Management Practices (BMPs)” mean activities, procedures and practices prescribed in a AWMP or CNMP which incorporates criteria and standards of the NRCS NJ-FOTG, BMP Manual or NJAES recommendations.

“Certification” means a written authorization from the Department to implement an approved CNMP. The certification is valid for five years from the date of issuance.

“Composting” means the aerobic, biological decomposition of organic matter, including manure, leaves, bedding and crop residues. It is a natural process that can be enhanced and accelerated by selecting organic waste “recipes” with proper carbon/nitrogen balance; mixing to provide proper aeration; and monitoring to assure that ideal moisture levels and temperatures are maintained. These extra steps provide

optimal conditions for the microbes that transform “raw” on-farm wastes into a relatively stable soil amendment/crop nutrient.

“Comprehensive Nutrient Management Plan (CNMP)” means a conservation plan that is a grouping of conservation practices and management activities which will help to ensure that both production and natural resource protection goals are achieved. The CNMP shall conform with the NRCS NJ-FOTG and be approved by the soil conservation district. The information included in the CNMP shall be confidential under the federal Freedom of Information Act (FOIA) and New Jersey Open Public Records Act (OPRA).

“Confined Animal Areas” means housed lots, feedlots, confinement houses, stall barns, milk rooms, milking centers, cowyards, barnyards, medication pens, dry lots, exercise yards and stables.

“Department” means the New Jersey Department of Agriculture.

“District” means a soil conservation district established in accordance with the Soil Conservation Act, N.J.S.A. 4:24-1 et seq. For the purposes of these rules, the District is an agent of the Department.

“Farm” means an agricultural animal operation that is involved in the raising, keeping, care, treatment, marketing and sale of livestock or an operation that receives or applies animal waste. A farm may include parcels owned, leased or otherwise available to the producer.

“Fomite” means inanimate objects that serve to carry infections or toxins from one animal to another.

“Land Application” means the application of animal waste on land for the purpose of soil improvement and utilization of nutrients by plants.

“Livestock” means all aquaculture species, cattle, horses, ponies and other domestic equidae (mules and similar members of the horse family), swine, sheep, goats, lama, poultry, fowl, ratites (big birds such as emus, ostriches), rabbits and small ruminants as defined in N.J.A.C. 2:8-1.2(a).

“Natural Resources Conservation Service (NRCS)” means the technical agency of the USDA, authorized by Public Law 46 of the 74th Congress for the conservation of agricultural and related natural resources.

“New Jersey Agricultural Experiment Station (NJAES)” means an arm of Rutgers,

the State University, conducting research in agriculture and related natural resources.

“New Jersey Department of Agriculture Best Management Practices Manual (NJDA BMP Manual) means the “On-Farm Strategies to Protect Water Quality” document published in 2003, as amended and supplemented, utilized as a planning and assessment tool for agricultural Best Management Practices, published by the New Jersey Association of Conservation Districts, in cooperation with the New Jersey Department of Agriculture, State Soil Conservation Committee and United States Department of Agriculture-Natural Resources Conservation Service.

“New Jersey Field Office Technical Guide (NJ-FOTG)” means the USDA-NRCS technical reference, as amended and supplemented, customized for the state of New Jersey, prescribing practices and standards for the conservation and management of soil, water and related natural resources.

“Rutgers Cooperative Research and Extension (RCRE)” means an arm of Rutgers, the State University, providing educational services in agriculture and related natural resources.

“Self-Certified Animal Waste Management Plan” means the written plan by the farm operator utilizing of the NJDA BMP Manual, for the management of animal waste.

The plan shall be self-certified by the owner or operator and the declaration page filed with RCRE.

“Soil Conservation District” means the district.

“State Agriculture Development Committee (SADC)” means the committee established pursuant to section 4 of P.L. 1983, c31 (C.4:1C-4).

“State Soil Conservation Committee (SSCC)” means the committee established pursuant to the Soil Conservation Act, N.J.S.A. 4:24-1 et seq.

“Technical Service Provider (TSP)” means NRCS certified professionals outside of the U.S. Department of Agriculture (USDA) that help agricultural producers apply conservation practices on the land.

“Vector” means a living organism that serves to carry infections or toxins from one animal to another.

“Waters of the State” means all surface and ground waters of the state except waste treatment lagoons, detention basins, constructed wetlands and closed system aquatic farms.

SUBCHAPTER 3. ANIMAL WASTE MANAGEMENT REQUIREMENTS

2:91-3.1 General Requirements

- (a) With the exception of Aquatic Farms, no farm shall allow animals in confined areas to have uncontrolled access to waters of the state.
- (b) Manure storage areas shall be located at least 100 linear feet from waters of the state, measured perpendicular to the watercourse from the top of bank outwards.
- (c) The land application of animal waste shall be performed in accordance with the principles of the New Jersey Department of Agriculture (NJDA), Best Management Practices (BMP) Manual, as amended and supplemented, which is hereby adopted and incorporated by reference.
 - a. Copies of the NJDA BMP Manual may be obtained by contacting the NJDA, local District, RCRE and the NRCS Field Offices.
 - b. A copy of this document is also on file in the NJDA office of the Director, Division of Agricultural and Natural Resources, Health and Agriculture Building, Market and Warren Streets, Trenton, NJ 08625.
- (d) No dead animals and related animal waste resulting from a reportable contagious disease or an act of bio-terrorism shall be disposed of without first contacting the State Veterinarian in accordance with N.J.A.C. 2:2-1.5.
- (e) Any person entering a farm to conduct official business related to these rules shall follow the bio-security protocol set forth at N.J.A.C. 2:8-8.1c.

- a. A copy of this document is on file in the NJDA Office of the Director, Animal Health, Health and Agriculture Building, Market and Warren Streets, Trenton, NJ 08625.

2:91-3.2 Aquatic Farms

- a. Aquatic Farms shall follow the waste management provisions set forth in N.J.A.C. 2:89 and the Aquaculture Management Practices at N.J.A.C. 2:76-2A.11.
 1. An electronic copy of the Aquaculture Management Practices is available at <http://www.jerseyseafood.nj.gov/aquacultureamp.pdf>.
 2. A copy of this document is on file in the NJDA office of the Director, Division of Agricultural and Natural Resources, Health and Agriculture Building, Market and Warren Streets, Trenton, NJ 08625.

2:91-3.3 Farms with 1 to 7 Animal Units

- a. Farms with 1 to 7 AUs are required to implement the General Requirements at N.J.A.C. 2:91-3.1 within 12 months of the effective date of these rules.
- b. Farms with 1 to 7 AUs are encouraged, but not required, to develop and implement a self-certified Animal Waste Management Plan (AWMP) in accordance with N.J.A.C. 2:91-3.5.
- c. Farms with 1 to 7 AUs, having documented animal waste discharges into

waters of the state, shall comply with the requirements set forth in N.J.A.C.

2:91- 3.6.

2:91-3.4 Farms receiving or applying less than 155 tons of animal waste per year

(a) Farms receiving or applying less than 155 tons of animal waste per year are required to implement the General Requirements at N.J.A.C. 2:91-3.1 within 12 months of the effective date of these rules

(b) Farms receiving or applying less than 155 tons of animal waste per year are encouraged, but not required to develop and implement a Self-certified Animal Waste Management Plan (AWMP) in accordance with N.J.A.C.

2:91-3.5

(c) Should the amount of manure received or applied increase to 155 tons or more of animal waste per year, the owner or operator shall be required to comply with the requirements set forth in N.J.A.C. 2:91-3.8.

2:91-3.5 Farms with 8 to 299 Animal Units with Animal Densities less than or equal to 1 AU per acre:

a. Farms with 8 to 299 AUs and Animal Densities less than or equal to 1 AU per acre, shall:

1. Implement the General Requirements at N.J.A.C. 2:91-3.1 within 12

months of the effective date of these rules;

2. Develop a Self-certified AWMP consistent with NJDA BMP Manual, as amended and supplemented, within 18 months of the effective date of these rules, and;
3. Implement the plan completely within 36 months of the effective date of these rules.

b. A self-certified AWMP shall include, but not be limited to, the following:

1. Name, address and phone number of the farm;
2. Owner or operator signature and date;
3. Records of action plan activities;
4. List of BMPs proposed;
5. Size and location of manure storage area(s);
6. Location(s) of composting area(s);
7. Premises Identification Number;
8. A nutrient management record. Records must include:
 - i. Field
 - ii. Acres
 - iii. Crop - Yield
 - iv. Type of Manure Applied, Date and Weather
 - v. Total Amount Applied
 - vi. Date Incorporated

vii. Fertilizer Applied

- c. The self-certified AWMP may be developed by the farm owner or operator or a person authorized to act on their behalf.
- d. A copy of the self-certified AWMP shall be signed by the applicant and the declaration page shall be filed with Rutgers Cooperative Research and Extension (RCRE). RCRE will provide a copy of the declaration page to the NJDA.

- 1. The declaration page shall include the following statement:

"As the owner/operator of the farm, I certify that, to the best of my ability, I have developed this self-certified Animal Waste Management Plan for my farm and will implement and maintain the provisions of the plan within the appropriate timeframes. I also certify, under penalty of law, that the information provided in this document is true, accurate and complete. I am aware that there are significant penalties for submitting false, inaccurate or incomplete information."

- 2. Incidents involving false swearing or false reporting in the documents required by these rules may be referred by the Department for prosecution pursuant to N.J.S.A. 2C:28-3.

- e. A copy of the self-certified AWMP shall be retained on the farm.
- f. The owner or operator shall review and update the plan and make changes as necessary for continued conformance with the NJDA BMP manual, as amended and supplemented.
- g. Should the Animal Density (AD) increase to greater than 1 AU per acre, or the number of Animal Units exceed 299 AUs, the owner or operator shall be required to comply with the requirements set forth in N.J.A.C. 2:91-3.6 or 3.7.

2:91-3.6 Farms with 8 to 299 Animal Units with Animal Densities greater than 1 AU per acre:

- a. Farms with 8 to 299 AUs and AD greater than 1 AU per acre shall:
 - 1. Implement the General Requirements at N.J.A.C. 2:91-3.1 within 12 months of the effective date of these rules;
 - 2. Develop a self-certified AWMP within 18 months of the effective date of these rules consistent with NJDA BMP Manual, as amended and supplemented, and which meets the USDA NRCS-FOTG standards and file with the local District for review and approval.

3. A copy of the approved Self-certified AWMP shall be retained on the farm;
 4. Implement the plan completely within 36 months of the effective date of these rules.
- b. A self-certified AWMP shall include, but not be limited to, the following:
1. Name, address and phone number of the farm;
 2. Owner or operator signature and date;
 3. Records of action plan activities;
 4. List of BMPs proposed;
 5. Size and location of manure storage area(s);
 6. Location(s) of composting area(s);
 7. Premises Identification Number;
 8. A nutrient management record. Records must include:
 - i. Field
 - ii. Acres
 - iii. Crop-Yield
 - iv. Type of Manure Applied, Date and Weather
 - v. Total Amount Applied
 - vi. Date Incorporated
 - vii. Fertilizer Applied

- c. The self-certified AWMP may be developed by the farm owner or operator or a person authorized to act on their behalf;
- d. The owner or operator shall review and update the plan and make changes as necessary for continued conformance with the NJDA BMP manual, as amended and supplemented and the USDA NRCS – FOTG.

2:91-3.7 Farms with 300 or more Animal Units:

(a) Farms with 300 or greater Animal Units shall:

1. Implement the General Requirements at N.J.A.C. 2:91-3.1 within 12 months of the effective date of these rules;
2. Develop a CNMP in consultation with the NRCS, TSP or an appropriate agent in conformance with the NRCS NJ-FOTG, as amended and supplemented, which is hereby adopted and incorporated by reference, and file with the District for approval.
 - i. Copies of the NJ-FOTG are available from the NRCS Field Offices and the State Office at 220 Davidson Ave, 4th Floor, Somerset, NJ 08873.
 - ii. An electronic copy of this document is available at <http://www.nrcs.usda.gov/technical/efotg/>.
 - iii. A copy of this document is on file in the NJDA Office of the

Director, Division of Agricultural and Natural Resources, New Jersey Department of Agriculture, Health and Agriculture Building, Market and Warren Streets, Trenton, New Jersey 08625.

3. If an approved CNMP was developed between October 1, 2001 and the effective date of this rule, implementation of such plan shall suffice to comply with these rules until modifications are needed to the plan in accordance with 2:91-3.7(f).

(b) The CNMP shall include the following:

1. Name, address and phone number of the farm;
2. Owner or operator signature and date;
3. Premises Identification Number;
4. Manure and Wastewater handling and storage;
5. Land treatment practices;
6. Nutrient management;
7. Record keeping;
8. Feed management;
9. Other utilization activities

(c) The District shall approve the CNMP when it is in conformance with the standards and criteria of the USDA-NRCS Field Office Technical Guide. The applicant shall provide a copy to the Department for certification along with a signed authorization releasing the plan to the Department.

- (d) Upon receiving the approved CNMP, the Department shall issue a certification to the applicant. The Department shall retain a copy of the certification and CNMP and mail the original to the applicant. The applicant shall retain a copy of the certification and CNMP on the farm.
- (e) The certification shall be valid for a period of five years. An application for certificate renewal shall be filed with the Department no later than 30 days prior to the expiration of the certification.
- (f) The owner or operator shall review the CNMP annually to assure compliance with the rules and that it continues to serve the intended purpose. An updated CNMP shall be filed within 30 days of the occurrence of the following:
 - 1. The number of AUs increases by 25%
- (g) Within 36 months of the effective date of these rules, the CNMP shall be completely implemented.

2:91-3.8 Farms receiving 155 or more tons of animal waste per year

- (a) Any operation that receives 155 tons or more of animal waste per year shall:
 - 1. Implement the General Requirements at N.J.A.C. 2:91-3.1 within 12 months of the effective date of these rules;
 - 2. Develop a self-certified AWMP within 18 months of the effective date of these rules in accordance with N.J.A.C. 2:91-3.5;

3. Implement the plan completely within 36 months of the effective date of these rules; and
4. Maintain the following hauling requirements:
 - i. Records of the dates of transfer and quantities of manure
 - ii. Records of the names and addresses of the sources of manure

2:91-3.9 Exemptions

The following operations are not subject to these rules:

- (a) An approved agricultural event or fair held within the State of New Jersey.
- (b) Operations that handle animal waste, including but not limited to dog kennels, petting zoos and game farms.

SUBCHAPTER 4. PENALTIES AND ENFORCEMENT

2:91-4.1 Penalty and enforcement provisions

- (a) The Department shall investigate alleged violations of the rules and take appropriate action, which may include, but is not limited to the following:
 1. Any person who violates any provision of this chapter, or the requirements of a Self-certified Animal Waste Management Plan or Comprehensive Nutrient Management Plan developed pursuant to this chapter, shall be liable to a civil administrative penalty of up to \$1,000 per day for each violation pursuant to the procedures set forth

in this section.

2. Where non-compliance is found, the Department may allow the owner or operator up to 60 days to address or correct the non-compliance before imposing a civil administrative penalty.

(b) If a Self-certified Animal Waste Management Plan or Comprehensive Nutrient Management Plan has been developed but not fully implemented, the Department shall determine the status of compliance with the plan.

(c) The Department shall use the factors described below to determine the amount of a civil administrative penalty under this section. The standards below assign each violation a point value. The total number of points is used to determine the penalty amount per day for each violation. The factors, and the point values assigned to them, are as follows:

1. The seriousness of the violation shall be classified as major, moderate or minor and assigned points as follows:
 - i. Major conduct shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator and is assigned three points;
 - ii. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and

iii. Minor conduct shall include any conduct not identified in (c)1i or ii above and is assigned one point.

2. The management plan type shall be assigned points as follows:

- i. A violation impacting a Self-Certified Animal Waste Management Plan is assigned one point; and
- ii. A violation impacting a Comprehensive Nutrient Management Plan is assigned two points.

(d) The Department shall sum the total points assigned according to the factors in (c) above, and shall determine the penalty amount per day using the following table:

Penalty Points Table

Total Points	Maximum Penalty Amount
	Per Day
2	\$250
3	\$500
4	\$750
5 or more	\$1,000

- (e) If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense.
- (f) For a violation under this section, the Department may adjust the daily civil administrative penalty amount based on the following factors:
1. The violator's compliance history;
 2. The nature, timing and effectiveness of measures the violator takes to mitigate the effects of the violation;
 3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;
 4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
 5. Other specific circumstances of the violator or violation.
- (g) No assessment shall be levied until after the party has been notified by certified mail or personal service and has been provided an opportunity for a hearing.
- (h) Any amount assessed shall take into account the seriousness and duration of the violation and whether the violation involves the failure to develop or to implement a self-certified animal waste management plan or comprehensive nutrient management plan and shall also provide for an enhanced penalty if the violation causes an impairment to water quality.

Any civil administrative penalty assessed under this may be compromised by the Secretary of Agriculture upon the posting of a performance bond by the violator, or upon such terms and conditions as the Secretary in consultation with the State Board of Agriculture may establish.

- (i) Any person who fails to pay a civil administrative penalty in full shall be subject, upon order of a court, to a civil penalty of up to \$1,000 for each violation. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. Any such civil penalty imposed may be collected with costs in a summary proceeding pursuant to the “Penalty Enforcement Law of 1999,” P.L. 1999, c.274 (C.2A:58-10 et seq.).
- (j) Anyone who is aggrieved by a determination pursuant to this section shall, upon written request transmitted to the Department within 20 days of that determination, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq and the Uniform Administrative Procedure Rules N.J.A.C. 1:1.

- 1. Requests for hearings shall be sent to Director, Division of Agricultural and Natural Resources, N. J. Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330.

Charles M. Kuperus

Secretary, New Jersey Department of Agriculture

November 4, 2005